



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
HAZARDOUS WASTE MANAGEMENT ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 18**

TO: West Virginia Steel Corporation
Mr. S. R. Smith, Jr., Vice-President
327 Glass Addition Road
Poca, WV 25159

DATE: July 14, 2016

ORDER NO.: HW-16-006

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 18, Section 1 et seq. to West Virginia Steel Corporation (hereinafter "West Virginia Steel").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

Charleston Facility - WVD005004791

1. WV Steel operated a facility located in Charleston, Kanawha County, West Virginia and has been assigned EPA ID No. WVD005004791. The facility was closed at the end of November, 2015.
2. On February 2, 2015, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the Code of Federal Regulations were observed and documented:
 - a. 40CFR279.22(c)(1) – The facility improperly labeled storage units/containers with used oil.
 - b. 40CFR261.5(g)(2) – The facility exceeded the hazardous waste storage limitation of 1,000kg on-site.

- c. 40CFR262.34(a)(3) – The facility failed to label containers clearly with the words "Hazardous Waste."
- d. 40CFR262.34(a)(2) – The facility failed to label containers clearly with the accumulation start date.
- e. 40CFR262.11 – The facility failed to make a hazardous waste determination.
- f. 40CFR262.12 – The facility failed to notify for all generated hazardous waste streams.
- g. 40CFR279.22(d) – The facility to contain and clean up released used oil.
- h. 40CFR262.34(d) – The facility stored hazardous waste for more than one hundred eighty (180) days.

As a result of the aforementioned violations, an NOV was issued to West Virginia Steel.

3. On December 1 and 2, 2015, WVDEP personnel conducted an inspection of SteelCon Supply Company, a sister facility of West Virginia Steel's Charleston facility, located in Beckley, Raleigh County, West Virginia. During the inspection, violations of the following sections of the Code of Federal Regulations were observed and documented in regard to West Virginia Steel's Charleston facility:

- a. 40CFR262.11 - West Virginia Steel failed to complete a hazardous waste determination for various coatings, paints, hardeners and additives transferred to SteelCon in Beckley.
- b. 40CFR262.12(c) - West Virginia Steel offered hazardous waste for transport and storage to a facility that did not have an EPA Identification Number and is not permitted to accept hazardous waste for transport or storage.
- c. 40CFR265.173(a) as referenced by 262.34(d)(2) - West Virginia Steel failed to keep containers of hazardous waste closed when waste was not being added or removed.
- d. 40CFR262.34(a)(3) as referenced by 262.34(d)(4) - West Virginia Steel failed to mark or label containers with the words "Hazardous Waste."
- e. 40CFR262.34(a)(2) as referenced by 262.34(d)(4) - West Virginia Steel failed to mark containers of hazardous waste with the accumulation start date.
- f. 40CFR262.20(a)(1) - West Virginia Steel failed to prepare a hazardous waste manifest for the shipment of hazardous waste to SteelCon's Beckley facility.
- g. 40CFR262.34(d)(5)(iii) - West Virginia Steel failed to ensure that all employees are thoroughly familiar with proper waste handling procedures, relevant to their responsibilities during normal facility operations.

As a result of the aforementioned violations, NOV No. 1512-173 was issued to West Virginia Steel.

Poca Facility - WVD98256622

4. WV Steel operates a steel fabrication facility located in Poca, Putnam County, West Virginia and has been assigned EPA ID No. WVD98256622.

5. On November 14, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of Code of Federal Regulations were observed and documented:
- a. 40CFR262.11-The facility failed to perform a hazardous waste determination.
 - b. 40CFR262.34(a)(2)-The facility failed to mark the accumulation start date on containers of hazardous waste.
 - c. 40CFR262.34(a)(3)-The facility failed to label containers of hazardous waste with the words, "Hazardous Waste."
 - d. 40CFR262.34(d)(5)(ii)-The facility failed to post emergency information next to telephones.
 - e. 40CFR265.173(a)-The facility failed to keep containers of hazardous waste closed.
 - f. 40CFR265.174-The facility failed to perform weekly inspections of hazardous waste storage areas.

As a result of the aforementioned violations, a Notice of Violation (NOV) was issued to West Virginia Steel.

6. On December 7, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of Code of Federal Regulations were observed and documented:
- a. 40CFR265.173(a) as referenced by 262.34(d)(2) –West Virginia Steel failed to keep containers of hazardous waste closed unless adding or removing waste.
 - b. 40CFR262.34(a)(3) as referenced by 262.34(d)(4) –West Virginia Steel failed to mark or label containers of hazardous waste with the words "Hazardous Waste."
 - c. 40CFR262.34(a)(2) as referenced by 262.34(d)(4) –West Virginia Steel failed to mark containers of hazardous waste with the accumulation start date.
 - d. 40CFR262.11 –West Virginia Steel failed to complete a hazardous waste determination for all wastes generated on site.
 - e. 40CFR265.174 as referenced by 262.34(d)(2) – West Virginia Steel failed to perform weekly inspections of the hazardous waste accumulation areas.
 - f. 40CFR262.34(d)(5)(iii) - West Virginia Steel failed to ensure that all employees are thoroughly familiar with proper waste handling procedures, relevant to their responsibilities during normal facility operations.

As a result of the aforementioned violations, Notice of Violation (NOV) No. 1601-167 was issued to West Virginia Steel.

7. On August 4, 2015, as a result of violations of the Code of Federal Regulations observed and documented at both the Charleston facility on February 2, 2015 and the Poca facility on November 14, 2014, West Virginia Steel and WVDEP entered into Consent Order No. HW-15-009. Order for Compliance No. Seven (7) of the Order required WV Steel to submit an approvable Plan of Corrective Action (POCA) that outlined action items and completion dates for how and when WV Steel would achieve compliance with all pertinent laws and rules.

8. On September 28, 2015, WVDEP approved the POCA submitted by West Virginia Steel to fulfill the aforementioned requirement of Order No. HW-15-009. Upon approval, the POCA became part of the Order, and failure to adhere to the plan and schedule is a violation of the Order. The aforementioned violations observed and documented in regard to both the Charleston facility (December 1 and 2, 2015) and the Poca facility (December 7, 2015) reflect that WV Steel failed to adhere to the approved POCA. Failure to comply with the terms and conditions of Order No. HW-15-009 is a violation of WV State Code 22-18-1 et seq. Specifically, West Virginia Steel failed to achieve the following items as outlined in the POCA:
 - a. Make a hazardous waste determination for all materials in and around the paint room.
 - b. Mark all containers of hazardous waste with the accumulation start date.
 - c. Keep all containers of hazardous waste closed except when adding or removing waste.
 - d. Conduct weekly inspections of hazardous waste storage areas.
9. On February 19, 2016, WVDEP personnel conducted an inspection at the Poca facility and determined that all of the violations had been returned to compliance.
10. On April 14, 2016, WVDEP personnel met with representatives of West Virginia Steel to discuss the terms and conditions of the Order.
11. On May 23, 2016, West Virginia Steel submitted financial documents to WVDEP. The information was used to perform an economic analysis which evaluated West Virginia Steel's ability to pay a civil administrative penalty.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 18, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. West Virginia Steel shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Because of West Virginia Steel's Code of Federal Regulations violations, West Virginia Steel shall be assessed a civil administrative penalty of nine thousand dollars (\$9,000) to be paid to the West Virginia Department of Environmental Protection for deposit in the Hazardous Waste Management Fund in accordance with the following payment schedule:

Payment 1 in the amount of \$750.00 due on or before September 1, 2016.

Payment 2 in the amount of \$750.00 due on or before October 1, 2016.

Payment 3 in the amount of \$750.00 due on or before November 1, 2016.

Payment 4 in the amount of \$750.00 due on or before December 1, 2016.

Payment 5 in the amount of \$750.00 due on or before January 1, 2017.

Payment 6 in the amount of \$750.00 due on or before February 1, 2017.

Payment 7 in the amount of \$750.00 due on or before March 1, 2017.
Payment 8 in the amount of \$750.00 due on or before April 1, 2017.
Payment 9 in the amount of \$750.00 due on or before May 1, 2017.
Payment 10 in the amount of \$750.00 due on or before June 1, 2017.
Payment 11 in the amount of \$750.00 due on or before July 1, 2017.
Payment 12 in the amount of \$750.00 due on or before August 1, 2017.

Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payments shall include a reference to the Order No. and shall be mailed to:**


**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. West Virginia Steel hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 18, Section 20 of the Code of West Virginia. Under this Order, West Virginia Steel agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, West Virginia Steel does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding West Virginia Steel other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, West Virginia Steel shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after West Virginia Steel becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and West Virginia Steel shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which West Virginia Steel intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of West Virginia Steel (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the

delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving West Virginia Steel of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject West Virginia Steel to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on West Virginia Steel, its successors and assigns.
7. This Order shall terminate upon West Virginia Steel's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.


Mr. S. R. Smith, Jr., Vice-President
West Virginia Steel Corporation


Date

Public Notice begin:

Date

Public Notice end:

Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date

revised June 2015

RECEIVED

JUL 21 2016

**ENVIRONMENTAL
ENFORCEMENT**



2/2/2015 – Hazardous Paint Waste at West Virginia Steel - Charleston facility.



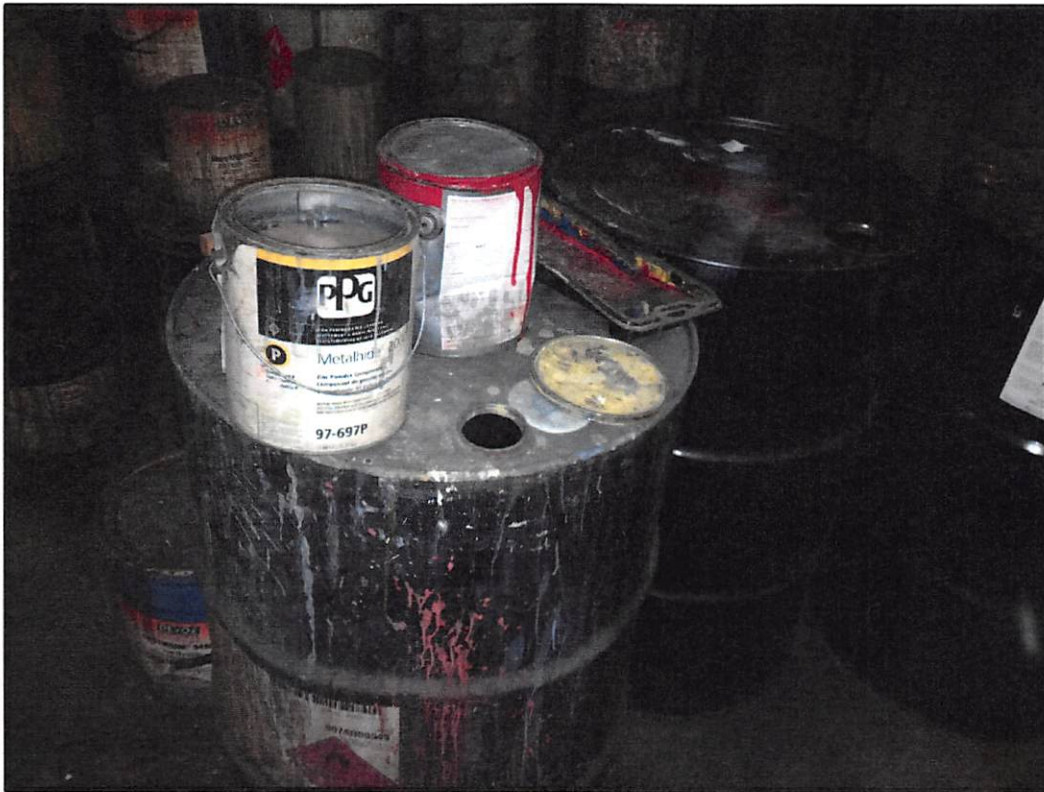
12/1/2015 – Open, unlabeled, undated containers of hazardous waste generated by West Virginia Steel Charleston facility at SteelCon Supply Company in Beckley, WV.



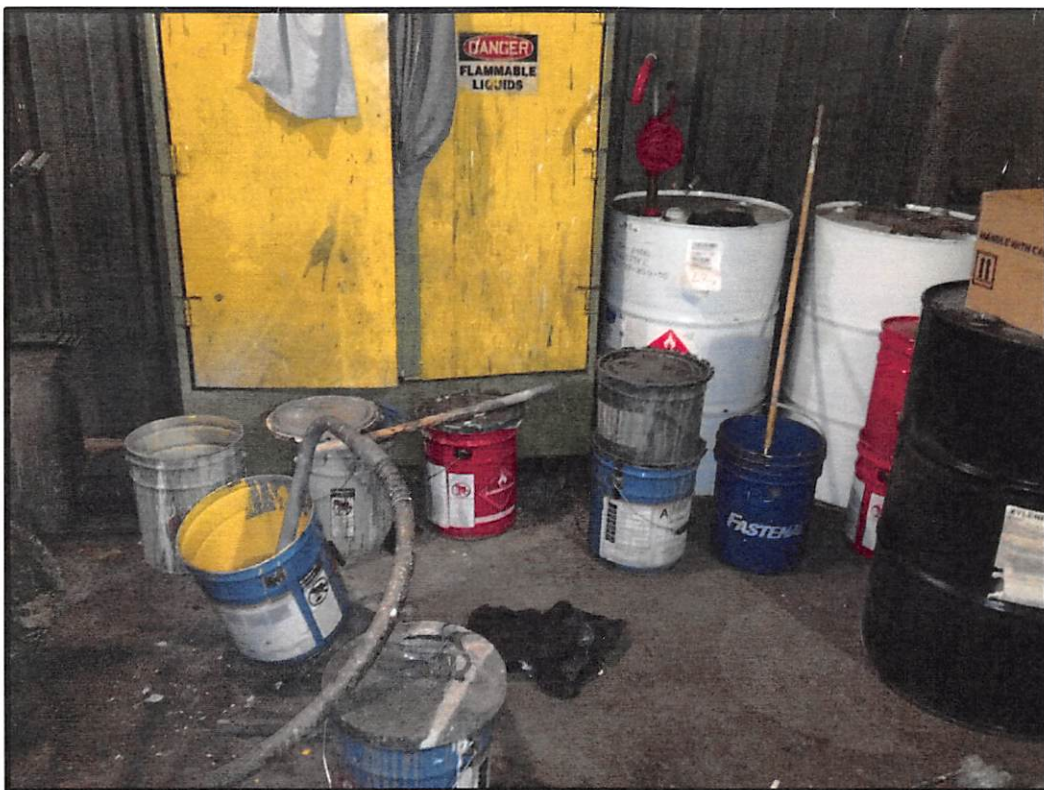
11/14/2014 – No hazardous waste determination. West Virginia Steel - Poca facility.



12/7/2015 – No hazardous waste determination. West Virginia Steel - Poca facility.



2/2/2015 – Open, undated, unlabeled containers of hazardous waste. West Virginia Steel - Poca facility.



12/7/2015 – Open, undated, unlabeled containers of hazardous waste. West Virginia Steel - Poca facility.

Hazardous Waste Base Penalty Calculation

(pursuant to 33CSR27-6.1)

Responsible Party: West Virginia Steel Corporation **EPA ID Number:** WVD005004791 and WVD982566622

Generator Classification: SQG

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#											
			3a, 6d	3b	3g, 6f	8								
a)	Harm to RCRA Program	1 to 3	3	3	2	3								
b)	Probability of Exposure	0 to 3	1	1	0	1								
c)	Potential Seriousness of Contamination	1 to 3	1	1	2	1								
	Average Potential for Harm Factor		1.7	1.7	1.3	1.7	No	No	No	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	2	2	2	3								

Potential for Harm Factors

1a. - Harm to the RCRA Program

- All regulatory requirements are fundamental to the continued integrity of the RCRA Program
- Violations that undermine the statutory or regulatory purposes or procedures for implementing the RCRA program may have serious implications and merit substantial penalties. Examples include but are not limited to: failure to notify as a generator, failure to respond to an info request, failure to prepare or maintain a manifest, and operating / disposal without a permit

1b. - Probability of Exposure - factors to be considered include but are not limited to: evidence of a release, evidence of waste mismanagement, and adequacy of provisions for detecting and preventing a release

1c. - Potential Seriousness of Contamination - factors to consider include but are not limited to quantity and toxicity of wastes (potentially) released, likelihood or fact of transport by way of environmental media (e.g. air and groundwater), and existence, size and proximity of receptor populations (e.g. local residents, fish, wildlife) and sensitive environmental media (e.g. surface waters and aquifers.)

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

[illegible]

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
3a, 6d	Moderate	Moderate	\$3,670	2	\$7,340
3b	Moderate	Moderate	\$3,670	1	\$3,670
3g, 6f	Moderate	Moderate	\$3,330	2	\$6,660
8	Moderate	Major	\$4,670	1	\$4,670
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$22,340

Penalty Adjustment Factors

(pursuant to 33CSR27-6.2)

Penalty Adjustment Factors

6.2.b.1 - Good faith efforts to comply or lack of good faith - 10% decrease to 10% increase

6.2.b.2 - Degree of Willfulness and / or Negligence - 0% to 30% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.4 - History of Non-Compliance - 0% to 100% increase -
based upon review of last three (3) years - Warning = maximum of 5% each,
N.O.V. = maximum of 10% each, previous Order = maximum of 25% each

6.2.b.5 - Ability to pay a civil administrative penalty - 0% to 100% decrease

6.2.b.6 - Economic Benefit of non-compliance

6.2.b.7 - Staff Investigative Costs

6.2.b.8 - Other relevant factors determined on a case-by-case basis

Base Penalty Adjustments

(pursuant to 33CSR27-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Good Faith - Increase			\$0
6.2.b.1 - Good Faith - Decrease		10	(\$2,234)
6.2.b.2 - Willfulness and/or negligence	20		\$4,468
6.2.b.3 - Cooperation with the Secretary		10	(\$2,234)
6.2.b.4 - Compliance/noncompliance history	25		\$5,585
6.2.b.5 - Ability to Pay an Administrative Penalty		88.33	(\$19,733)
6.2.b.6 - Economic Benefit (flat monetary increase)	\$0		\$0
6.2.b.7 - Staff Investigative Costs (flat monetary increase)	\$778		\$778
6.2.b.8 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.8 - Additional Other Factors - Decrease (flat monetary decrease)		\$0	\$0
Public Notice Cost (flat monetary increase)	\$30		\$30
Penalty Adjustments			(\$13,340)
Penalty =			\$9,000

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$0
Comments: Staff investigative costs = laboratory analysis of samples.	